

**MEMORANDUM**

TO: County Council

FROM: Kathleen Boucher, Senior Legislative Attorney *KWB*  
Amanda Mihill, Legislative Analyst

SUBJECT: **Introduction:** Bill 30-07, Buildings – Energy Efficiency

Bill 30-07, Buildings - Energy Efficiency, sponsored by Councilmembers Berliner, Praisner, Elrich and Floreen, is scheduled to be introduced on November 20, 2007. A public hearing is tentatively scheduled for January 17, 2008 at 7:30 p.m. This bill:

- Requires new commercial, multi-family residential, and single-family residential buildings to meet ENERGY STAR standards;
- Requires the Director of the Department of Public Works and Transportation (DPWT) to develop an energy baseline, energy unit savings plan, and energy cost savings plan for each County building;
- Requires each energy unit savings plan and energy cost savings plan to include a plan for using an energy performance contract unless the Director finds that the cost of using an energy performance contract outweighs the benefit; and
- Requires a building owner to pay an Environmental Sustainability Fee if the building does not comply with Green Building or energy efficiency standards set out in County law.

This packet contains:

Bill 30-07  
Legislative Request Report

Circle #

1  
14

Bill No. 30-07  
Concerning: Buildings - Energy Efficiency  
Revised: 11/16/07 Draft No. 9  
Introduced: November 20, 2007  
Expires: May 20, 2009  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Berliner, Council President Praisner, and Councilmembers Elrich and Floreen

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**AN ACT** to:

- (1) require certain commercial, multi-family residential, and single-family residential buildings to meet certain ENERGY STAR standards;
- (2) require the Director of the Department of Public Works and Transportation to develop an energy baseline, energy unit savings plan, and energy cost savings plan for each County building;
- (3) require that each energy unit savings plan and energy cost savings plan include a plan for using an energy performance contract unless the Director finds that the cost of using an energy performance contract outweighs the benefit;
- (4) require a building owner to pay an Environmental Sustainability Fee if the building does not comply with certain energy efficiency and environmental design standards; and
- (5) generally amend the law relating to buildings, energy, and environmental policy.

By adding

Montgomery County Code  
Chapter 8, Buildings  
Section 8-14B and 8-14C

By amending

Montgomery County Code  
Chapter 8, Buildings  
Article VII. Energy Efficiency and Environmental Design  
Sections 8-48, 8-49, 8-50, and 8-51

By adding

Montgomery County Code  
Chapter 8, Buildings  
Article VIII. Energy Efficiency

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

Sec. 1. Section 8-14B and Section 8-14C are added as follows:

**8-14B. County buildings – energy unit savings plans, energy cost savings plans, and energy performance contracts.**

(a) Definitions. In this Section, the following words have the meanings indicated:

“County building” means a building which is owned or leased by the County.

“Department” means the Department of Public Works and Transportation.

“Director” means the Director of the Department or the Director’s designee.

“Energy baseline” means the amount of energy consumed each year by a County building based on historical metered data, engineering calculations, submetering of buildings or energy consuming systems, building load simulation models, statistical regression analysis, or any combination of those methods.

“Energy cost savings plan” means a plan to reduce a County building’s energy costs, including related operation and maintenance costs.

“Energy performance contract” means a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, maintenance, or repair of an identified energy conservation measure or series of measures in a County building.

24 "Energy unit savings plan" means a plan to reduce the amount of  
 25 energy used by a County building, as measured in kilowatt hours or  
 26 British thermal units.

27 (b) Requirements. The Director must:

- 28 (1) Develop an energy baseline, energy unit savings plan, and energy  
 29 cost savings plan for each County building;  
 30 (2) Submit an initial report to the County Executive and County  
 31 Council by September 1, 2008 which summarizes the energy  
 32 baseline, energy unit savings plan, and energy cost savings plan  
 33 for each County building; and  
 34 (3) Submit an annual report to the County Executive and County  
 35 Council by September 1 of each year that summarizes the steps  
 36 taken in the preceding fiscal year to implement the energy unit  
 37 savings plan and energy cost savings plan for each County  
 38 building.

39 (c) Energy performance contracts. Each energy unit savings plan and  
 40 energy cost savings plan that the Director prepares under subsection (b)  
 41 must include a plan to use an energy performance contract unless the  
 42 Director finds that the cost of using an energy performance contract  
 43 outweighs the benefit.

44 **8-14C. Private buildings – incentives**

45 (a) Study. The Director must evaluate options for creating incentives for  
 46 the owners of commercial, multi-family residential, or single-family  
 47 residential buildings to modify the buildings to increase their energy  
 48 efficiency.

(b) Report. The Director must submit a report to the County Executive and County Council by July 1, 2008 regarding the Director's findings and recommendations.

Sec. 2. The title to Article VII of Chapter 8 and Section 8-48, Section 8-49, Section 8-50, and Section 8-51 are amended as follows:

**[ARTICLE VII. ENERGY EFFICIENCY AND ENVIRONMENTAL DESIGN.] Article VII. Energy Efficiency and Environmental Design.**

**8-48. Definitions.**

In this Article, in addition to any term defined elsewhere in this Chapter [or in regulations adopted under this Chapter], the following words have the meanings indicated:

\* \* \*

"ENERGY STAR rating" means the ENERGY STAR rating developed by the federal Environmental Protection Agency which reflects a building's energy efficiency.

\* \* \*

"National energy performance rating system" means the rating system developed by the federal Environmental Protection Agency under which a building may obtain the ENERGY STAR rating.

\* \* \*

"Professional engineer" means an engineer who is licensed by the State of Maryland.

"Temporary use and occupancy certificate" means a certificate that authorizes the use and occupancy of a building for up to 18 months.

**8-49. Standards and requirements.**

- 74 (a) County buildings. Any County building must, in addition to any action  
 75 required under Section 8-14A, achieve:
- 76 (1) [a] A silver-level rating in the appropriate LEED rating system,  
 77 as certified by the Green Building Council;
- 78 (2) [a] A silver-level rating in the appropriate LEED rating system,  
 79 as verified by the Director or a qualified person approved by the  
 80 Director; or
- 81 (3) [energy] Energy and environmental design standards that the  
 82 Director identifies as equivalent to a silver-level rating in the  
 83 appropriate LEED rating system, as verified by the Director or  
 84 a qualified person approved by the Director.
- 85 (b) Other covered buildings. Any other covered building must achieve:
- 86 (1) [a] A certified-level rating in the appropriate LEED rating  
 87 system, as certified by the Green Building Council;
- 88 (2) [a] A certified-level rating in the appropriate LEED rating  
 89 system, as verified by the Director or a qualified person  
 90 approved by the Director; or
- 91 (3) [energy] Energy and environmental design standards that the  
 92 Director identifies as equivalent to a certified-level rating in the  
 93 appropriate LEED rating system, as verified by the Director or  
 94 a qualified person approved by the Director.
- 95 (c) Energy efficiency. In addition to complying with subsection (a) or (b),  
 96 any covered building must achieve the ENERGY STAR rating under  
 97 the national energy performance rating system.

(d) Additions. However, for any building for which an application for all necessary building permits was filed before September 1, 2008, any later addition to that building must achieve the requirements of a subsection (a) or (b), whichever applies, and subsection (c) only if the addition would increase the building's:

- (1) [land] Land coverage by at least 100%; and
- (2) [gross] Gross floor area by at least 10,000 square feet.

**8-50. Building permits; [use-and-occupancy permit] use and occupancy certificates.**

(a) Design plans. The applicant for a building permit for a covered building must submit to the Department:

- (1) [design] Design plans for the building which are likely to achieve the applicable standard under:

(A) [Section 8-49] Section 8-49(a) or (b), whichever applies, as certified or otherwise approved by the Green Building Council or verified by the Director or a qualified person designated by the Department; and

(B) Section 8-49(c), as verified by a professional engineer; and

- (2) [any] Any other document or information the Department finds necessary to decide whether the building will achieve the applicable [standard] standards under Section 8-49.

(b) Building permit. The Department must require compliance with Section 8-49 as a condition of any building permit issued for a covered building.



(c) Final use and occupancy certificate. The Department must not issue a final [certificate of] use and occupancy certificate for a covered building unless it finds that the building has achieved the applicable [standard] standards under Section 8-49.

(d) Temporary use and occupancy certificate. If a covered building has not achieved the applicable standards under Section 8-49 but the Department finds that a process is in place to achieve those standards within 18 months, the Department may issue a temporary use and occupancy certificate which is valid for up to 18 months.

(e) Environmental Sustainability Fee.

(1) If a temporary use and occupancy certificate expires before a covered building complies with the applicable standards under Section 8-49, the building owner must pay an Environmental Sustainability Fee that is equal to the cost of bringing the building into compliance.

(2) The fees collected under paragraph (1) must be used to fund programs that help mitigate the energy and environmental impacts of buildings.

#### **8-51. Regulations.**

The County Executive must adopt regulations under method (2) to administer this Article. Those regulations must specify:

(a) [the] The LEED rating system, and any equivalent energy and environmental design standard, that applies to each type of covered building under [Section 8-49] Section 8-49(a) and (b).

- (b) [the] The process to verify that a covered building complies with any applicable standard under Section 8-49, including the types of persons who are qualified to verify compliance;
- (c) [any] Any standards and procedures under which the Director may approve full or partial waivers of Section 8-49 when compliance would be impractical or unduly burdensome and the public interest would be served by the waiver; [and]
- (d) The methodology that the Department will use to determine the amount of the Environmental Sustainability Fee that must be paid under Section 8-50(e); and
- (e) [standards] Standards and procedures for any enforcement mechanism[, such as a performance bond,] that the Department finds necessary to accomplish the purposes of this Article.

**Sec. 3. Article VIII is added to Chapter 8 as follows:**

**Article VIII. Energy Efficiency**

**8-53. Definitions.**

In this Article, the following words have the meanings indicated:

“Covered building” means a newly constructed:

- (1) Single-family residential building; or
- (2) Multi-family residential building which is:
  - (A) Not a covered building under Section 8-48; and
  - (B) Eligible to earn the ENERGY STAR rating.

“Department” means the Department of Environmental Protection.

“Director” means the Director of the Department or the Director’s designee.

171 "ENERGY STAR rating" means the ENERGY STAR rating developed by the  
 172 federal Environmental Protection Agency which measures a building's energy  
 173 efficiency.

174 "Home Energy Rating System" or "HERS" means the energy efficiency rating  
 175 system for residential buildings developed by RESNET.

176 "Qualified home energy performance rater" means an individual who:

177 (1) Is certified by RESNET as a home energy performance rater; or

178 (2) Meets other equivalent requirements approved by the Director.

179 "RESNET" means the Residential Energy Services Network.

180 "Performance path" means the process developed by the federal  
 181 Environmental Protection Agency under which a building may achieve the  
 182 ENERGY STAR rating if it:

183 (1) Achieves the applicable HERS index score; and

184 (2) Is verified and field-tested by a qualified home energy  
 185 performance rater.

186 "Prescriptive path" means the process developed by the federal Environmental  
 187 Protection Agency under which a building may achieve the ENERGY STAR  
 188 rating if it:

189 (1) Complies with the applicable ENERGY STAR Builder Option  
 190 Package; and

191 (2) Is verified and field-tested by a qualified home energy  
 192 performance rater.

193 **8-54. ENERGY STAR standard.**

194 A covered building must achieve the ENERGY STAR rating under the  
 195 performance or prescriptive path.

**8-55. Building permits; use and occupancy certificates.**

(a) Design plans. An applicant for a building permit for a covered building must submit to the Department:

(1) Design plans for the building that are likely to achieve the standard under Section 8-54, as certified by a qualified home energy performance rater; and

(2) Any other document or information the Department finds necessary to decide whether the building will achieve the standard under Section 8-54.

(b) Building permit. The Department must require compliance with Section 8-54 as a condition of any building permit issued for a covered building.

(c) Final use and occupancy certificate. The Department must not issue a final use and occupancy certificate for a covered building unless it finds that the building complies with Section 8-54.

(d) Temporary use and occupancy certificate. If a covered building does not comply with Section 8-54 but the Department finds that a process is in place to achieve compliance within 18 months, the Department may issue a temporary use and occupancy certificate which is valid for up to 18 months.

(e) Environmental Sustainability Fee.

(1) If a temporary use and occupancy certificate expires before a covered building complies with Section 8-54, the building owner must pay an Environmental Sustainability Fee that is equal to the cost of bringing the building into compliance.

(2) The fees collected under paragraph (1) must be used to fund programs that help mitigate the energy and environmental impacts of buildings.

**8-56. Regulations.**

The County Executive must adopt regulations under method (2) to administer this Article. Those regulations must specify:

- (a) Any process for becoming a qualified home energy performance rater that the Director finds is equivalent to the RESNET certification process;
- (b) Any standards and procedures under which the Director may approve full or partial waivers of Section 8-54 when compliance would be impractical or unduly burdensome and the waiver would serve the public interest;
- (c) The methodology that the Department will use to determine the amount of the Environmental Sustainability Fee that must be paid under Section 8-55(e); and
- (d) Standards and procedures for any enforcement mechanism that the Department finds necessary to accomplish the purposes of this Article.

**Sec. 3. Applicability; initial regulations.**

- (a) Section 8-49(c), as added by Section 2 of this Act, applies to any covered building, other than a County building, for which a building permit application is filed on or after January 1, 2009.
- (b) Section 8-49(c), as added by Section 2 of this Act, applies to any County building for which design funding is first included in the appropriate capital budget for fiscal year 2009 or any later fiscal year,

or, if design funding is not directly included in the capital budget, for which a building permit application is filed on or after January 1, 2009.

(c) Section 8-54, as added by Section 3 of this Act, applies to any covered building for which a building permit application is filed on or after January 1, 2009.

(d) By March 15, 2008, the County Executive must adopt, and submit to the Council under County Code Section 2A-15, regulations required by Section 8-51, as amended by Section 2 of this Act, and Section 8-56, as added by Section 3 of this Act.

*Approved:*

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Marilyn J. Praisner, President, County Council

Date

*Approved:*

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Isaih Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 30-07

*Buildings – Energy Efficiency*

<b>DESCRIPTION:</b>	Requires certain commercial, multi-family residential, and single-family residential buildings to meet ENERGY STAR standards, requires the Department of Public Works and Transportation to develop an energy baseline, energy unit savings plan, and energy cost savings plan for each County building, requires that each energy unit savings plan and energy cost savings plan include a plan for using an energy performance contract, and requires a building owner to pay an Environmental Sustainability Fee if the building does not comply with certain energy efficiency and environmental design standards.
<b>PROBLEM:</b>	Although the County Green Buildings Law requires certain commercial and multifamily buildings to meet LEED Silver (County buildings) or LEED Certified (private buildings) standards, those standards can be achieved without making any significant reductions in energy consumption. Under current County law, there are no energy or environmental design standards for single family residential buildings. The County has made only modest investments in retrofitting existing government buildings.
<b>GOALS AND OBJECTIVES:</b>	To reduce the energy consumption of commercial, residential, and government buildings in the County.
<b>COORDINATION:</b>	Department of Environmental Protection, Department of Permitting Services
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Kathleen Boucher, Senior Legislative Attorney (240) 777-7940 Amanda Mihill, Legislative Analyst (240) 777-7815

**APPLICATION  
WITHIN  
MUNICIPALITIES:**

To be researched.

**PENALTIES:**

Class A violation.

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